Joint Committee on Taxation
JCX-9-86
July 21, 1986

POSSIBLE RESOLUTION OF CERTAIN DIFFERING PROVISIONS OF TECHNICAL CORRECTIONS (H.R. 3838)

(The provisions are in the same order as in the Conference Comparison, JCX-8-86)

TECHNICAL CORRECTIONS TO THE TAX REFORM ACT OF 1984

I. Tax Reform Generally

A. Tax Freeze Provisions (sec. 1501 of the House bill and sec. 1801 of the Senate amendment)

(1) The Senate amendment provides that specified farm finance leases are not disqualified by reason of a corporation becoming a partner or beneficiary of the lessor.

House recedes.

B. Tax-exempt Entity Leasing (sec. 1502 of the House bill and sec. 1802 of the Senate amendment)

(1) The Senate amendment provision relating to subsidiary organizations applies to property placed in service after March 1, 1986 (rather than September 27, 1985), and does not tax dividends out of previously taxed earnings; and

House recedes with September 27, 1985 effective date.

(2) the Senate amendment clarifies that a specified project was covered by the 1984 transitional rules.

House recedes.

C. Debt Instruments (sec. 1503 of the House bill and sec. 1803 of the Senate amendment)

(1) The provision of the Senate amendment relating to the amortization of bond premium applies to bonds issued after March 1, 1986 (rather than September 27, 1985);

Senate recedes.

(2) the provisions of the Senate amendment provides that basis, for purposes of computing bond premium, generally

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cannot exceed fair market value for bonds issued after May 6, 1986;

House recedes.

(3) the provision of the Senate amendment requiring accrual of interest on certain short term obligations applies to obligations acquired after March 1, 1986 (rather than September 27, 1985); and

Senate recedes.

(4) the provision in the House bill clarifying the effective date for the repeal of the capital asset requirement is deleted from the Senate amendment.

Senate recedes.

D. **Corporate (sec. 1504 of the House bill and sec. 1804 of the Senate amendment)**

(1) The provision in the Senate amendment relating to the dividends received deduction applies to stock acquired after March 1, 1986 (rather than date of enactment);

House recedes.

(2) the provision in the Senate amendment relating to the accumulated earnings tax applies to distributions after March 1, 1986 (rather than September 27, 1985);

Senate recedes.

(3) the provision in the House bill grandfathering a specified corporation from the changes to the affiliated corporation rules is deleted in the Senate amendment;

Senate recedes.

(5) the provision in the Senate amendment relating to the definition of qualified stock purchase applies for purchases begun after March 1, 1986 (rather than September 27, 1985);

House recedes with a January 1, 1986 effective date.

(6) the provisions of the House bill relating to reorganizations are further clarified in the Senate amendment and made applicable to plans of reorganization adopted after date of enactment;

House recedes with drafting clarifications.

(7) the overlap between "C" and "D" reorganizations is

clarified in the Senate amendment;

House recedes.

(8) the provision in the Senate amendment relating to collapsible corporations applies to sales after March 1, 1986 (rather than September 27, 1985);

Senate recedes.

(9) the effective date in the Senate amendment for the treatment of distributions of appreciated property is postponed for a specified corporation;

House recedes.

(10) the effective date in the Senate amendment of the earnings and profits change for foreign corporations is delayed for 2 years (rather than the 6 months in the House bill) and the delay in the effective date in the Senate amendment applies only to installment sales; and

House recedes.

(11) for purposes of the golden parachute provision,

(a) the limitation in the Senate amendment on the number of employees treated as highly compensated for purposes of the golden parachute provision is the lesser of (i) the highest paid 1 percent of the individuals performing services for the corporation (determined on an affiliated group basis) or (ii) the highest paid 250 individuals performing services for the corporation or for each corporation that is a member of the same affiliated group; and

House recedes.

(b) the application of the golden parachute rules in the Senate amendment to a securities law violation is clarified to apply only to a violation of a generally enforced securities law or regulation and to provide that the burden of proof with respect to establishing the occurrence of a violation is upon the Secretary of the Treasury.

House recedes.

E. Trusts (sec. 1506 of the House bill and sec. 1806 of the Senate amendment)

The Senate amendment clarifies that the election to recognize gain or loss applies to all trust distributions made during the taxable year.

House recedes.

F. Accounting (sec. 1507 of the House bill and sec. 1807 of the Senate amendment)

(1) The transitional rule in the Senate amendment for nuclear decommissioning expenses applies through 1986 (rather than 1985);

House recedes.

(2) a transitional rule relating to a certain payment to an insurance company with respect to an asbestos claim is deleted from the Senate amendment;

Senate recedes.

(3) Under the Senate amendment, economic performance with respect to tort liability is deemed to occur as qualified payments are made to a designated settlement fund; a specified taxpayer may deduct payments to a fund that does not qualify as a designated settlement fund and is taxed at a special rate; and

House recedes.

(4) a specified taxpayer is allowed under the Senate amendment to use the cash method of accounting.

House recedes.

H. Depreciation (sec. 1509 of the House bill and sec. 1809 of the Senate amendment)

(1) The provision relating to related party sale-leasebacks in the Senate amendment applies to property placed in service after March 1, 1986 (rather than September 27, 1985, or December 15, 1985, for a specified transaction); and

House recedes with a January 1, 1986 effective date.

(2) the provision in the House bill clarifying that the provision in the 1984 Act relating to bond-financed property did not apply to certain property grandfathered in TEFRA is deleted in the Senate amendment.

Senate recedes.

I. Foreign (sec. 1510 of the House bill and secs. 990 and 1810 of the Senate amendment)

(1) The Senate amendment provides a working capital

exception to the rules maintaining the character of interest income for dividends and interest received from a regulated investment company by a portfolio shareholder in such company;

House recedes.

(2) The Senate amendment provides an election to be treated as a U.S. resident for income tax purposes in a calendar year to certain alien individuals who qualify as U.S. residents in the following year under the 1984 Act's substantial presence test.

House recedes.

J. Compliance (sec. 1511 of the House bill and sec. 1811 of the Senate amendment)

The Senate amendment requires the passthrough of information to beneficial owners of partnership interests.

House recedes with amendment to provide similar rules as to trusts and estates.

K. Low-Interest Loans (sec. 1512(b) of the House bill and sec. 1812(b) of the Senate amendment)

The exception in the Senate amendment to the provision for obligations issued by Israel does not contain the restrictions in the House bill which are intended to limit the exception to bonds of a type now being issued.

House recedes with a provision that debt must be payable in U.S. dollars annually at 4 percent rate or greater.

L. Related Party Transactions (sec. 1512(c) of the House bill and sec. 1812(c) of the Senate amendment)

(1) the related party partnership rules in the Senate amendment apply to sales after May 6, 1986 (rather than September 27, 1985); and

Senate recedes.

(2) a transitional rule for a specified debt is deleted in the Senate amendment.

Senate recedes.

II. Life Insurance (secs. 1521-1529 of the House bill and secs. 1821-1829 of the Senate amendment)

(1) An exception to the rule reducing the deduction for accelerated policyholder dividends is added in the Senate amendment for group insurance provided with respect to a welfare benefit plan.

House recedes.

(2) The definition of 50 largest stock companies is modified in the Senate amendment to provide that a company is excluded if it had a negative equity base at any time during 1981, 1982, or 1983, and to make exclusion of negative equity base companies mandatory.

House recedes.

(3) The differential earnings rate applicable for determining estimated tax payments in the Senate amendment is the lesser of the rate for the second taxable year preceding the year for which the installment is paid, or the rate for the year for which the installment is paid.

House recedes.

(4) There is no exception in the Senate amendment in the case of mandatorily redeemable stock from the treatment of indirect distributions from the policyholder surplus account, and the effective date for loans is changed from November 27, 1985, to March 1, 1986.

House recedes.

(5) The anti-double proration rule is modified in the Senate amendment to provide that section 245(b) dividends are treated as 100 percent dividends.

House recedes.

(6) When the tables with respect to a type of insurance are changed by Treasury, the new table is treated under the Senate amendment as a new prevailing commissioner's standard table.

House recedes.

(7) The provision in the Senate amendment determining the taxable year for which the fresh-start adjustment is included in earnings and profits is clarified to provide that, in general, the year is 1984. A special rule provides for the inclusion in earnings and profits in 1985 in the case of one company.

House recedes.

(8) In the definition of life insurance in the Senate amendment, a clarification is added that policyholder dividends are not subtracted twice from the amount of premiums paid.

House recedes.

(9) Under the Senate amendment, life insurance provided under a self-insured church plan can qualify as life insurance so that the death benefit is excludable from gross income under section 101(a).

House recedes with amendment limiting provision to situations where religion prevents purchase of commercial insurance.

(11) The clarification in the Senate amendment of the exceptions to the five percent penalty for premature distributions from deferred annuity contracts becomes effective 6 months after the date of committee action.

House recedes. Effective 6 months after date of enactment.

(12) Under the Senate amendment, life insurance companies acquired in 1983 are permitted to make an election under section 818(c) of pre-1984 Act law for the period between acquisition and December 31, 1983, provided that the acquired company had an 818(c) election in effect immediately prior to the acquisition.

House recedes with a delay in the date that section 338 election is required. No inference is to be made as to the effect of a section 338 election.

(13) Under the Senate amendment, a certain mutual insurance company may avoid the differential earnings tax with respect to nonparticipating mortgage life insurance business placed in a stock subsidiary, provided the subsidiary pays no policyholder dividends.

Senate recedes.

(14) The grandfather rule for group-term life insurance is clarified in the Senate amendment to provide that a comparable successor plan is treated as such a plan with respect to any employee whose benefits do not change under the successor plan.

House recedes with a technical correction.

III. Simplification (secs. 1541-1549 of the House bill and secs. 1841-1848 of the Senate amendment)

The Senate amendment does not contain the provision allowing C.P.A.'s and enrolled agents to practice before the Tax Court in cases involving $10,000 or less.

House recedes.

IV. Employee Benefits

A. Welfare Benefit Plan Provisions (sec. 1551 of the House bill and sec. 1851 of the Senate Amendment)

(1) The clarification in the Senate amendment of the definition of a fund provides that a qualified nonguaranteed contract--

(a) includes any insurance contract that provides a reasonable premium stabilization reserve held under the contract;

House recedes.

(b) the provision in the Senate amendment under which an insurance contract is not treated as a fund if experience rated refunds are based on the experience of the employer is modified to provide that the exception applies if the only amounts payable (directly or indirectly) to the employer or employees as experience-rated refunds or policy dividends are substantially unrelated to the amount of welfare benefits paid to (or on behalf of) the employees of the employer, the administrative expenses incurred by the insurance company in providing the welfare benefits, and the investment experience of the insurance company with respect to amounts contributed by or held for the employer; and

Senate recedes with a clarification of the legislative history.

(c) The Senate amendment provides that, except in the case of a reserve for post-retirement medical or life insurance benefits and any other arrangement between an insurance company and an employer under which the employer has a contractual right to a refund or dividend based solely on the experience of such employer, any account held for an employer may not be treated as a fund earlier than 6 months following the publication of final regulations.

House recedes.

(3) The account limits in the Senate amendment do not apply in the case of an employee pay-all VEBA if the plan has at least 50 employees covered and no employee is entitled to a refund with respect to amounts in the fund, other than a refund based on the experience of the entire fund.

House recedes.

(4) The Senate amendment provides that the deductibility of deferred compensation is clarified to provide that an employer's deduction is governed by section 404 if the amounts would, but for section 404, be deductible under any section of the Code, rather than only if the amounts would be deductible under section 162 or section 212.

House recedes with a technical correction.

B. Pension Plan Provisions (sec. 1552 of the House bill and sec. 1852 of the Senate amendment)

(2) The Senate amendment provides that the repeal in the 1984 Act (and the reduction in TEFRA) of the estate tax exclusion for pension benefits is modified to provide that the provision does not apply to an individual (a) separated from service before January 1, 1982, and (b) who otherwise meets that requirements for the grandfather rule, is treated as having made an irrevocable election of the time and form of benefits if the individual did not change an election before the individual's death.

House recedes.

C. Fringe Benefit Provisions (sec. 1553 of the House bill and sec. 1853 of the Senate amendment)

(1) The Senate amendment provides that the exception for a leased section of a department store engaged in offering beautician services applies if the section is customarily engaged in over-the-counter sales of beauty aids in the ordinary course of business;

House recedes.

(2) the exception in the Senate amendment to the tuition reduction nondiscrimination rules for Oberlin College is revised (a) to permit the testing for nondiscrimination to be done without regard to whether there is evidence that the benefits provided were the subject of good faith collective bargaining and (b) to include in the exception a tuition reduction program of Carleton College; and

House recedes.

(3) the House bill provides an exception to the tuition reduction provision for a certain student.

Senate recedes.

E. Miscellaneous Provisions (sec. 1555 of the House bill and sec. 1855 of the Senate amendment)

(1) The Senate amendment provides that the provision in ERTA relating to stock restrictions is made retroactive for certain transfers in 1973; and

House recedes.

(2) the House bill allows certain section 83(b) elections to be made for stock transfers before July 1, 1976.

Senate recedes.

V. Tax-Exempt Bonds (secs. 1561-1574 of the House bill and secs. 1861-1873 of the Senate amendment)

(1) the Senate amendment determines the qualified veterans' mortgage bonds eligible to be advance refunded by reference to bonds outstanding on December 31, 1981 (rather than December 5, 1980);

House recedes.

(2) the Senate amendment deletes rules authorizing Treasury to waive the requirement of an address in the case of private activity bond volume cap carryforward elections for solid waste disposal facilities;

Senate recedes.

(3) the Senate amendment includes an exception from the Federal guarantee prohibition for a Tennessee solid waste disposal facility having an output contract with the Federal Government;

House recedes.

(4) the Senate amendment adds an exception from the arbitrage rebate requirement for a Muskogee, Oklahoma, project previously excepted from certain other requirements of the 1984 Act;

House recedes.

(5) the Senate amendment deletes an amendment to the volume of supplemental student loan bonds authorized to be issued by the Illinois Student Loan Authority in the 1984

Act;

Senate recedes.

(6) the Senate amendment deletes an exception to the private loan bond rule for certain bonds for the St. Johns River Power Park;

Senate recedes.

(7) the Senate amendment adds an exception to the private loan bond rule for certain bonds for the Massachusetts Municipal Wholesale Electric Company;

House recedes.

(9) the Senate amendment deletes exceptions from the small-issue IDB principal user rule for certain bonds for two alternative energy projects (Richmond, California, and Placerville, California) and adds two new exceptions for such facilities (Los Banos, California, and Warrensburg, New York).

Senate recedes to House provisions; House recedes to Senate provisions.

VI. Miscellaneous

A. Sale of Stock in Foreign Corporations (sec. 1575(g) of the House bill and sec. 1875(g) of the Senate amendment)

The Senate amendment applies to exchanges after March 1, 1986 (rather than September 27, 1985).

House recedes.

C. Excise Tax on Truck Piggyback Trailers (sec. 1577(c) of the House bill)

The House bill eliminates recapture of the benefits of a reduced tax rate on piggyback trailers after 6 years.

Senate recedes.

D. Interest on Estate Tax (sec. 1878(c) of the Senate amendment)

The Senate amendment clarifies that transfer of property to the United States in satisfaction of estate tax liability pursuant to section 1028 of the 1984 Act will satisfy the liability for interest accrual on the tax.

House recedes.

E. Demolition Expenses (sec. 1578(g) of the House bill and sec. 1878(h) of the Senate amendment)

The Senate amendment provides that the unrecovered basis in two specified demolished structures may be deducted in the year of demolition.

House recedes.

F. Distilled Spirits (sec. 1579(i) of the House bill)

The House bill clarifies eligibility for drawback of distilled spirits from Puerto Rico and Virgin Islands.

Senate recedes.

G. Religious and Apostolic Organizations (sec. 1879(i) of the Senate amendment)

The Senate amendment allows the investment tax credit to certain religious and apostolic organizations, effective January 1, 1979.

House recedes.

H. Mutual Savings Banks (sec. 1879(j) of the Senate amendment)

The Senate amendment conforms the definition of mutual savings banks in the provision allowing exemption to insurers (sec. 501(c)(14)) with the definition in the provision allowing bad debt reserves (sec. 591(b)).

House recedes.

I. Investment Company Reorganizations (sec. 1879(k) of the Senate amendment)

The Senate amendment clarifies that a corporation owning stock in a RIC, REIT, or a diversified investment company is treated as owning stock held by such company, for purposes of the investment company rules.

House recedes.

J. Subchapter S Corporations (sec. 1879(l) of the Senate amendment)

(1) The Senate amendment provides that a separate share of a trust may be treated as a separate trust; and

House recedes.

(2) The Senate amendment clarifies that payment of regular corporate income tax does not reduce amounts available for tax-free distributions to shareholders.

House recedes.

K. QTIP Elections (sec. 1879(m) of the Senate amendment)

The Senate amendment provides that the time for filing an election to treat certain life estates as eligible for the gift tax deduction is extended where the time for filing a gift tax return is extended, effective for transfers after 1985.

House recedes with a transitional rule.

L. Windfall Profit Tax (sec. 1879(n) of the Senate amendment)

The Senate amendment treats an interest in oil held by the Episcopal Royalty Company as a "qualified charitable interest" exempt from the tax.

House recedes.

M. Church Employees (sec. 1585(b) of the House bill and sec. 1882(b) of the Senate amendment)

The Senate amendment is effective after 1985 (rather than 1984).

House recedes.

N. Insolvent Farmers (sec. 1896 of the Senate amendment)

The Senate amendment provides that claims arising from the minimum tax amendment made by 1985 Reconciliation Act may be made within one year after the enactment of this bill.

House recedes.

TECHNICAL CORRECTION TO SOCIAL SECURITY ACT

(Sec. 1585 of the House bill and Sec. 1882 of the Senate amendment)

The Senate amendment makes certain corrections in spelling, language, and indentation provisions related to the Social Security Act programs.

House recedes.

TECHNICAL CORRECTIONS TO MEDICARE

(Sec. 1895 of the Senate amendment)

(1) The Senate amendment corrects the termination date of the ACCESS demonstration project;

House recedes.

(2) The Senate amendment clarifies that the Director of OTA should initially provide for such terms for members of the Prospective Payment Assessment Commission that ensure that no more than 8 members term would expire in the same year; and

House recedes.

(3) The Senate amendment corrects citation errors.

House recedes.

TECHNICAL CORRECTIONS TO AFDC AND CHILD SUPPORT PROGRAMS

IV. Treatment of Foster Care Payments (sec. 1883(b)(9) of the Senate amendment

The Senate amendment clarifies that the sibling of an AFDC child receiving foster care maintenance payments is not a member of the AFDC unit.

House recedes.

V. Amendment Related to the Child Support Enforcement Amendments of 1984 (sec. 1898 of the Senate amendment)

The Senate amendment amends section 457(b)(3) of the Social Security Act to assure that child support required by a court order is treated the same as support ordered pursuant to an administrative process.

House recedes.

TECHNICAL CORRECTIONS TO TRADE AND TARIFF PROGRAMS

I. Amendments to the Tariff Schedules (sec. 1591 of the House bill and sec. 1885 of the Senate amendment)

(1) The Senate amendment contains a provision modifying the article description for nicotine resin in item 907.63 of the Tariff Schedules;

House recedes.

(2) The Senate amendment does not have a provision relating to silicon electrical steel; and

Senate recedes.

(3) The Senate amendment contains a provision providing for retroactive application of the amendments made in this section.

House recedes.

II. Countervailing and Antidumping Duty Provisions (sec. 1592 of the House bill and sec. 1886 of the Senate amendment)

The Senate amendment includes an additional section in Title VII of the Tariff Act of 1930 to be amended to conform to the definition of the term, "interested party" as changed to include industry-labor coalitions.

House recedes.

III. Trade Act of 1974 (sec. 1593 of the House bill and sec. 1887 of the Senate amendment)

(1) The Senate amendment adds a correction to an erroneous designation in the trade agreement authority;

House recedes.

(2) The Senate amendment adds a provision to correct paragraph designations in section 141(d) of the Trade Act as amended by the Trade and Tariff Act of 1984;

House recedes.

(3) The Senate amendment changes the reference date from 1984 to 1986 for application of the aggregate waiver authority of the competitive need limits as of 1987 under the Generalized System of Preferences; and

House recedes.

(4) The Senate amendment amends the Tariff Schedules to provide permanent duty-free treatment for articles imported under item 687.70.

House recedes.

IV. Trade and Tariff Act of 1984 (sec. 1595 of the House bill and sec. 1889 of the Senate amendment)

(1) The Senate amendment deletes a provision in the House bill correcting an erroneous reference in section 126 of the Trade and Tariff Act of 1984; and

House recedes.

(2) The Senate amendment deletes the correction made by the House bill in a Tariff Schedules item number reference contained in the agricultural perishable provision of the U.S.-Israel Free Trade Area implementing legislation.

Senate recedes.

V. Technical Amendments Relating to Customs Users Fees (sec. 1893 of the Senate amendment)

(1) The Senate amendment excludes the application of the $5 passenger fee to passengers transiting through the United States for whom customs inspectional fees are not provided;

House recedes.

(2) The Senate amendment precludes Customs from assessing overtime charges against airlines for pre-clearance of passengers in foreign locations where U.S. Customs officers undertake such pre-clearance;

House recedes.

(3) The Senate amendment directs that regulations issued by the Secretary to collect such fees should be consistent with the current regulations to collect the airport departure tax; and

House recedes.

(4) The Senate amendment provides that overtime charges for inspectional or quarantine services (other than customs services) on Sundays or holidays be reimbursed as if they had been performed during a weekday.

House recedes.